

1 DEPARTMENT OF NATURAL RESOURCES OF THE STATE OF DELAWARE

2
3 In re:)
4)
5 Open Space and)
6 Natural Areas)
7 Advisory Councils)
8 provide)
9 recommendation on)
10 proposed maps to)
11 DNREC Secretary)
12)
13 Title 7)
14 Conservation)
15 Part VII)
16 Natural Resources)
17)

18 A public hearing was taken pursuant to notice
19 before Ellen Corbett Hannum, Registered Merit Reporter,
20 in the Auditorium of Department of Natural Resources,
21 Richards and Robbins Building, 89 Kings Highway, Dover,
22 Delaware, on Monday, May 1, 2006, beginning at
23 approximately 6:00 p.m., there being present:

24 BEFORE: LYNN WILLIAMS, THE CHAIRPERSON

APPEARANCES:

25 ROBERT F. PHILLIPS, ESQ.
26 Department of Justice
27 Carvel State Office Building
28 820 N. French Street
29 Wilmington, Delaware 19801 zip
30 Counsel for DNREC

31 CORBETT & WILCOX
32 Registered Professional Reporters
33 The Parcels Building - 230 N. Market Street
34 Wilmington, DE 19801
(302) 571-0510

1 BY THE CHAIRPERSON:

2 Q. Evening, Ladies and Gentlemen, can you hear?
3 Is the microphone working for you? Okay. My name is
4 Lynn Williams, I'm the chairperson of the Delaware Open
5 Space Council and I would like to introduce the chair of
6 the Natural Areas Council, Terry Higgins. Terry, would
7 you raise your hand? Thank you. The two councils have
8 jointly sponsored the preparation of these maps thanks to
9 the staff of DNREC, and we will be presenting them
10 tonight for your public comment. We have had three
11 workshops last week, Tuesday, Wednesday, and Thursday,
12 tonight we have the support of the DNREC staff and court
13 reporters, and I thank them for helping us with this
14 hearing.

15 I would also like to introduce Bob
16 Phillips, who is our Deputy Attorney General assigned to
17 the Delaware Open Space Council, and he will be
18 conducting the hearing in terms of calling on people and
19 going over the rules and regulations and procedures for
20 the hearing.

21 There are two purposes for the state
22 resource area maps which have been -- were first produced
23 in 1990 and are now being reproduced. For the Open Space
24 Council they define the areas in which we can acquire

1 property or rights to property. And the second thing, in
2 the Land Protection Act it states that such maps shall be
3 provided to the counties and that they must incorporate
4 them in their comprehensive plans as a zoning overlay,
5 but it's up to them as to what rules and regulations they
6 require of that zoning overlay on individual parcels.

7 As I mentioned, the council started in
8 1990, since then we have spent about a quarter of a
9 billion dollars, \$250 million of both state and
10 conservation organizations and federal funds. We have
11 leveraged quite a bit to bring that total and preserved
12 about 44,000 acres in the state of Delaware. This
13 hearing will continue after tonight, the record will be
14 open until May -- Friday, at 4:30, and then the next
15 council meeting will be next Tuesday, May 9th at
16 9 o'clock in the senate hearing room of Legislative Hall.

17 At this point I will introduce Bob
18 Phillips and he will go over the procedures for the
19 hearing.

20 MR. PHILLIPS: Good evening. First of
21 all, this is a hearing held solely for the purpose of
22 gathering information that the Open Space Council may
23 want to consider. It is not intended to be an
24 adversarial hearing in any way and we ask that everybody

1 present conduct themselves in that spirit. Next, I would
2 like to ask anybody who has an intention to make a
3 comment or wants to put something on the record to sign
4 up on the list at the back of the room if you have not
5 done so. The order in which you sign up determines the
6 order in which you would be called upon to speak. And
7 the way I plan to do this tonight is to allow Mr. Ron
8 Vickers from DNREC to put on the presentation. And after
9 that we will begin to take comments from the public and
10 they will be on the record, which is why we have court
11 reporters here. In that regard I would ask that
12 everybody speak as clearly as possible so that the court
13 reporter can make an accurate transcript of this, which
14 will be distributed to the council members who cannot
15 attend tonight and will be posted on the DNREC website at
16 some point in the near future, this week, I believe.

17 Anyone who wishes to make any type of
18 comment, again, please sign up and we will call on you in
19 the order in which you signed up. When you get up to
20 speak, please identify yourself for the record so that
21 the transcript is clear. There is a microphone over
22 there that we would ask you each to stand next to while
23 you are speaking and that way everybody can hear
24 everything.

1 Now, some of you may have some comments
2 or questions. If the chair of the Open Space Council
3 will -- wants to have a DNREC employee answer a technical
4 question that comes from a member of the public, she will
5 ask DNREC to do so. If it is not possible to answer that
6 question because it requires some scientific research or
7 something of that nature, we will post the answer to the
8 question on the website.

9 Now, it doesn't appear that there are a
10 great number of people who wish to speak tonight but
11 after the DNREC presentation comes, I will have the list
12 brought down here and I will begin calling off the names
13 of the people who have signed up. To avoid a time
14 problem, we will impose a time limit on anybody speaking
15 so that we can reserve an appropriate amount of time for
16 everyone. As Lynn just mentioned a few minutes ago,
17 written submissions for anybody who doesn't get the
18 chance to speak or thinks of something else to say after
19 tonight, written submissions will be accepted at the
20 DNREC's office until Friday, May 5th at 4:30 p.m. If
21 there is any -- if there is no further business from the
22 chair, I think we are ready to begin.

23 Ron.

24 MR. VICKERS: Can everybody hear me?

1 (Audience responded yes.)

2 MR. VICKERS: My name is Ron Vickers,
3 I'm the land preservation office manager in the Division
4 of Parks and Recreation of the Department of
5 Naturalization and Environmental Control. What I would
6 like to submit for the public record tonight is a
7 PowerPoint presentation that we have presented at the
8 three public workshops that were mentioned a little bit
9 ago. And also, after that, I have a series of background
10 documentation and other items to submit for the public
11 record as well. Open spaces and natural places, a vision
12 for conserving Delaware's precious natural lands.

13 Thomas Jefferson referred to Delaware as
14 a jewel of a state. Although small in size, the Diamond
15 State is rich with a variety of natural landscapes,
16 conservation lands, and plant and animal species and
17 cultural heritage. We all look forward to having a place
18 to live, to work, and to recreate in this state. What's
19 at stake and why now? The beauty and wonder of our
20 natural environment across the state is steadily
21 disappearing in the wake of development. Clear air,
22 clean water and diversity of plants and animals and our
23 quality of life require that we adopt responsible growth
24 policies and maintain important conservation lands

1 throughout the state. What's at stake? Delaware's
2 economy. Agriculture is an \$800 million a year industry.
3 Outdoor recreation is a \$127 million a year industry,
4 that includes the fishing, hunting, and wildlife aspect.
5 Timber industry is a three to \$4 million a year business
6 in Delaware, and tourism at Delaware state parks alone
7 has generated 5.9 million visitors a year, and that's a
8 number from 2002 and we anticipate that number has gone
9 up since then. Failure to responsibly conserve
10 Delaware's open spaces and natural places will negatively
11 impact our economy. Why now? Delaware's development
12 pattern is scattered across the landscape. Development
13 is occurring at a pace of approximately 6,000 units per
14 year. As a consequence, our forests, wetlands,
15 recreational lands, and farms are disappearing.

16 Why now? Delaware's native plants and
17 animals are seriously imperiled. 40 percent of the
18 native plants are rare or uncommon. More than 40 percent
19 of animals are of conservation concern. Forest habitats
20 are the most threatened type of natural habitat in
21 Delaware. 29 percent of the state is forested. 20,000
22 acres of forest were lost between 1986 and 1999, a
23 13-year period. In 2005 alone, 4500 acres of forest were
24 lost to development. 54 percent of Delaware's native

1 plants are forest-dependent species. 40 percent of
2 Delaware's rare bird species are forest-dependent
3 species. The cost of conservation services is greater
4 than tax revenues. For every one dollar in tax revenue
5 gained from residential development we spend \$1.20 for
6 services, such as road, sewer, water, police, and
7 schools.

8 Our approach to conserving open spaces
9 and natural places.

10 The framework for conserving these
11 areas. In 1978 the Natural Areas Preservation System was
12 created with the passage of the Natural Areas
13 Preservation System Act. The purpose of this is to
14 maintain an inventory of the best natural lands for
15 scientific or educational value in the state. It also
16 provided for the creation of a Natural Areas Advisory
17 Council. The natural areas can be characterized
18 generally as the best of the best in terms of natural
19 habitats throughout our state.

20 In 1990 the Land Protection Act was
21 passed. This establishes a system for identifying state
22 resource areas as valuable open space areas for
23 preserving. It also established the creation of an Open
24 Space Council and it provides a framework for county land

1 use requirements for protection of state resource areas.

2 The Land Protection Act, the lands that are considered
3 under that, include the natural areas and other lands
4 outside of those, other recreational lands and other
5 state resource areas of value.

6 State resource areas. These are open
7 space lands that are valued for their national, cultural,
8 or geological significance: Wildlife habitat, outdoor
9 recreation, scenic beauty, conservation of water
10 resources, and in some cases they are buffering or
11 connecting open space investment areas.

12 Open space investment areas are lands
13 that have been purchased for permanent protection through
14 acquisition or easement through federal, state, county,
15 or local agencies and private nonprofit conservation
16 groups. Examples are wildlife areas and refuges, nature
17 preserves, parks and other recreation areas, and
18 cultural, historic or archeological sites.

19 How can we conserve these open spaces
20 and natural places? The open space and Natural Areas
21 Advisory Council's review and recommend for adoption
22 state resource area and natural area maps. They
23 recommend land for permanent protection or nature
24 preserve protection by the state. DNREC produces these

1 maps and adopts the maps upon recommendation of the
2 council. Then these maps provided to each of the
3 counties for use in their comprehensive land use plans.

4 Open spaces and natural places maps. We
5 go through a series of these maps so you can see what we
6 are talking about. How were these maps created? We now
7 have better natural resource and landscape information
8 than we did when these were first originated in 1978 with
9 the natural areas program with a revision in 1988 and
10 1990 for the state resource area maps. Background
11 information and other items we have used are existing
12 natural areas/maps, state resource areas, green
13 infrastructure and wildlife action plan maps.

14 Wildlife action plan maps are a
15 relatively new mapping series that looks at what is
16 needed in terms of wildlife habitat throughout the state
17 in order to maintain a healthy population in the native
18 birds and animals throughout Delaware. We have better
19 information on rare species locations, natural
20 communities research, forest research, stream sampling
21 data from 1993 to 2003, culture resource information,
22 geological information, field review and we have had used
23 land use land cover data related to the type of
24 development that's on the landscape, and that's 2002 land

1 use land cover data, the latest that we have.

2 Also, as well as having better
3 information, better resources, we have better technology
4 now. Our work is based on 2002 air photography and we
5 were able to get 1937 air photography as well, and the
6 '37 air photography aided us greatly in looking for older
7 growth forests throughout the state. We also made better
8 use of geographic positioning system units. G.P.S. units
9 were used to specifically locate rare species sites
10 around the states.

11 And we have geographic information
12 system mapping capabilities. This is a mapping program
13 that allows you to overlay a variety of different natural
14 resource layers, so you can build layer upon layer and
15 see what is on the landscape starting with air
16 photography and building up from there on various data
17 layers that we have in the system.

18 Now we will go into a series of maps
19 that we have created through this process. This is a map
20 showing statewide developed lands. And our definition in
21 our state resource area natural area mapping the
22 definition of developed lands is as follows, we were
23 looking at land to land types of data, if you will. In
24 all of our acreage we have taken out the water areas,

1 such as the inland bays and major river corridors so we
2 are looking just at lands items. Those things that may
3 have potential, have a land use change attached to them.
4 So when we did the data, what we did for developed lands
5 is we looked at the 2002 land use land cover data.
6 Again, that's the latest data that's available that's
7 been analyzed. And we took out and we actually plotted
8 or mapped, as you see here, all the residential,
9 commercial, industrial lands throughout the state. This
10 also includes all major subdivisions that have been
11 approved through January of 2006 and it also includes a
12 couple other layers, one is a farmstead layer. We pulled
13 out farm buildings and farm out buildings, not the whole
14 farm but just the farm structures, if you will. We also
15 have included transition lands, those are lands that are
16 going from the air photography which we are moving from
17 open land to being developed, and we also have included
18 an extraction layer, those are sand and gravel, mining
19 operations, bar pits, if you will.

20 That information was pulled together
21 through our GIS system and we have come up with this map,
22 the developed lands map. And that's
23 24 percent of the state. And there was a series of
24 handouts in the back and hopefully there are still a few

1 left for folks to see. We have specific acreage figures
2 that are attached to each of these.

3 Overall in the state of Delaware, as I
4 said, we are looking at land-to-land acreage. And the
5 land base that we are using is 1,251,000 acres of land in
6 Delaware. And we are saying that roughly 24 percent of
7 that is in the development layer. And that equates to
8 approximately just a little under 300,000 acres.

9 Specifically, we also then have broken
10 it down into county by county. In New Castle County,
11 Delaware, 48 percent of the county is developed according
12 to our definition. In Kent County, 17 percent; in Sussex
13 County, 17 percent as well.

14 As we said, there are two different land
15 protection programs that we are dealing with here
16 tonight. The first is the natural areas program and the
17 second is the open space or Land Protection Act program.
18 Currently, the natural areas throughout the state
19 encompass about 8 percent of the state. And again, these
20 maps originally were created in 1978 and revised in 1988.

21 In New Castle County, 10 percent of New
22 Castle County is reflected as a current natural area. In
23 Kent County, 8 percent. And in Sussex County,
24 approximately 7 percent.

1 Through our research and the latest
2 information that we have available, we are now proposing
3 14 percent statewide area to be considered as a natural
4 area, proposed natural area. And respectfully in each
5 county, New Castle County, 15 percent; Kent County,
6 17 percent; Sussex County, 13 percent. The second
7 program that we are dealing with is the state resource
8 area maps and the land protection program or the open
9 space program. And currently, again, these maps were
10 created in 1990, approximately 21 percent of the state is
11 mapped as a current SRA, state resource area. And by
12 county currently, that's 24 percent of New Castle; 26 of
13 Kent, 16 of Sussex.

14 Now, the natural areas which I showed
15 just before this are a subset of the state resource
16 areas, they are underneath them, if you will. So when
17 you see a proposed state resource area of 23 percent,
18 that contains the natural areas underneath. So it's not
19 added to that. It's contained within it. So we are
20 proposing 23 percent of the state to become state
21 resource areas. New Castle county, that's 25 percent;
22 Kent County, 27 percent; and Sussex County, 19 percent.

23 Now, we also want to look at, well, what
24 is already protected on the landscape? We have done the

1 analysis of looking at what are the significant natural
2 resource lands throughout the state. We want to say,
3 okay, what is protected across the land, and this is a
4 map of protected lands. 24 percent of the state is
5 already protected. Our definition through the process of
6 protected includes all lands, conservation lands that are
7 fee simple owned by federal, state, county, and some
8 local organizations or governments and private
9 conservation organizations, and conservation lands that
10 are protected through conservation easements, and this
11 also includes agricultural preservation easements as
12 well. So this was looking across the landscape
13 regardless of whether it was in an SRA or not an SRA or
14 in a natural area or not in a natural area, but
15 24 percent of the state is already protected.

16 Another big part of this protected layer
17 is titled wetlands. In our definition of protected
18 lands, titled wetlands are protected. By state statute
19 it is very difficult to convert titled wetlands to any
20 other use so we have included them in this analysis.

21 We have seen the big picture of
22 development, if you will, across the state, and we have
23 seen the big picture of protected lands across the state,
24 then we want to come back and focus on our natural areas

1 and resource areas.

2 Again, looking -- county by county on
3 protected lands. 23 percent of New Castle; 30 percent of
4 Kent, again, a lot of that are titled marshes, or titled
5 wetlands along the coast, and 21 percent of Sussex. We
6 have done the analysis for developed. We have done the
7 analysis for protected regardless of where it's located,
8 and we have done our analysis for determining what we
9 propose as the new state resource areas. Then we wanted
10 to look at, of those state resource areas, what's already
11 protected? So of the state resource areas acreage which
12 we were proposing, which was approximately 286,000 acres,
13 of that only one-third of it is not protected or about
14 94,000 acres.

15 So what is in red, the sort of reddish color, it's
16 purplish color on the screen, but reddish color is
17 protected land over top of green resource areas.

18 You can see by this analysis, a lot of
19 the coastal lands are protected. State parks, swamp,
20 fish and wildlife habitat, state forest lands and so
21 forth around the state are protected already. And what
22 we are showing left is 33 percent of those proposed state
23 resource areas are not protected. That 33 percent figure
24 again comes down to 94,000 acres and that is 8 percent of

1 the total state acreage. Okay?

2 County by county we are looking again,

3 it's roughly two-thirds/one-third breakdown in New

4 Castle, and in Kent County also, and in Sussex County.

5 And you will notice that these are large blocks of land

6 which are scattered around the state which are green, if

7 you will, still out there. A lot of those are large

8 forest blocks and some associated wetlands with those.

9 In our analysis originally and looking at state resource

10 areas in New Castle County we were looking at forest

11 blocks, 100 acres in size and larger. Contiguous lands

12 of 100 acres and larger. In Kent and Sussex County we

13 were looking at forest blocks of 250 acres and larger in

14 size, and there is evidence in scientific literature,

15 particularly looking at 250 acres and larger in terms of

16 wildlife species that are dependent on those type of land

17 masses.

18 As an example, this is just a very

19 dramatic example of the kind of analysis we have done.

20 This is New Castle County in Blackbird Forest area. And

21 what you see listed on the slide here is a combination,

22 again, of green as proposed SRA, the reddish/purplish

23 color you see is state resource area that is already

24 protected, a lot of that is Blackbird State Forest land

1 and other conservation lands, and the blue dots are rare
2 species locations. And then you will see a lot of those
3 rare plants or animal species are located within the
4 green. Some are outside but those are a little smaller,
5 less defensible patches of lands, if you will, from a
6 protection standpoint, but most of them or a lot of them
7 are contained within the green.

8 An example in Kent County -- this is the
9 Choptank River area at the western edge of the county.
10 Again, the same color scheme, the green is the proposed
11 state resource area. The purple/red is already protected
12 state resource area and the blue are rare species
13 locations. And again, you will see through this river
14 corridor, forest corridor area along the Choptank, there
15 are a lot of rare plants and animals in that corridor.
16 There are a few scattered dots outside, but again we did
17 not include those because they are probably in small
18 forest patches or isolated spots that are very, very
19 difficult to defend in terms of protecting particular
20 species or habitat. We are looking at connection of
21 corridors and large forest blocks.

22 An example in Sussex County, this is
23 part of the Nanticoke River watershed, the head water
24 forest areas, if you will. Running down the left side of

1 the screen is the actual head waters of the Nanticoke
2 River, running up in the middle on a diagonal is Bradley
3 branch which goes back up into the Ellendale Redden State
4 Forest area. Again what you see in green are proposed
5 state resource areas. What is seen in the purplish is
6 the lands that are already protected over top of the
7 green. And again it's gathering of rare species
8 throughout the area. Again, a lot of those are contained
9 within the forest plots that we are looking at and others
10 in riparian habitats and others are outside. Just an
11 example of the type of analysis looking at a couple
12 different data maps here.

13 Encouraging conservation and managing
14 growth. Many of you have heard of Governor Minner's
15 livable Delaware initiative. And it sets the standard
16 in trying to mesh these two ideas of encouraging
17 conservation and promoting growth. The guiding
18 principals of livable Delaware are guiding growth to
19 areas that are most prepared to accept it, preserve
20 farmland and open space, promote infill and
21 redevelopment, facilitate attractive, affordable housing
22 and protect our quality of life while slowing sprawl.

23 The unified growth policy of livable
24 Delaware includes helping to retain the state's natural

1 character and uniqueness and reducing the effects of
2 sprawl, protecting land value, promoting strong economy
3 and protecting air and water quality, slowing the loss of
4 plants, animals and natural habitat resulting from
5 unbalanced development. And the law requires the state
6 to identify protection areas, or areas worthy of
7 protection. The counties play a key role.

8 The counties are responsible for working
9 with developers to design communities that fit with the
10 local character and minimize the impact on open space
11 land. Creating clear zoning laws, ordinances, and
12 specific environmental performance standards and design
13 criteria.

14 Path forward, local government
15 assistance. Our department is prepared to provide
16 assistance to the counties through this process. The
17 county comprehensive plan and review is under way in each
18 of the counties right now. Landowners system, there are
19 a variety of programs available. Improving the
20 integration of state and county regulations and
21 standards. We are going to look at how our laws and
22 regulations mesh with counties' laws and regulations to
23 make sure we are all on the same page. And maintain the
24 accuracy of the state resource areas delineation, now

1 that we have the technology and the data in hand we will
2 be able to maintain these databases in an up-to-date
3 standard now. There are a variety of landowner incentive
4 programs. These are the various agencies that provide
5 lots of those and our Division of Fish and Wildlife
6 coordinates a lot of the programs in terms of the
7 incentive programs.

8 Our schedule has been public workshops in each county,
9 last week, the 25th, 26th, and 27th. We are having a
10 public hearing tonight. Our Open Space and Natural
11 Places Advisory Council provides recommendations on these
12 proposed maps to our department of secretary. The
13 Natural Areas Advisory Council meeting is Wednesday at
14 9:30 at the Grassdale Center at Fort Dupont in Delaware
15 City and our Open Space Council meeting is next Tuesday,
16 the 9th, at 9 o'clock at legislative hall on the second
17 floor.

18 Once maps are proposed to the department
19 of secretary, then the secretary adopts them and provides
20 them to the counties. We are anticipating, hopefully,
21 depending on comments, to do this in May each month.
22 Each county is in the midst of its comprehensive plan
23 development. In New Castle, we should have the plan
24 finished by January '07; in Kent, March of '07; in

1 Sussex, October of '07. Any county ordinances based on
2 these maps are to be developed within 18 months of
3 receiving the maps.

4 And as I said earlier, Jefferson did
5 refer to this as a jewel of a state and the stewardship
6 of the state is a responsibility that we all share for
7 hopefully the quality of our lives and that of our
8 children.

9 That's the end of the slides as we have
10 presented them. There was one other slide that shows
11 comments. This is the mailing information and my e-mail
12 address for any further public hearing comments for the
13 record, we are accepting those until 4:30 Friday of this
14 week. Now, there are a couple of points that I do want
15 to make through this process.

16 One is, just because it is green on the
17 map does not mean that it cannot be developed. What it
18 means is that we have gone through the process of
19 identifying natural resource lands of value from a
20 variety of reasons and a variety of standpoints that we
21 feel should be protected in some way. And by protected,
22 that may mean that in some cases the state or private
23 conservation organizations may look to purchase those
24 lands or to place a conservation easement on them with

1 the landowner, in other cases it may be that we would
2 work with the counties to provide some type of protection
3 for them.

4 Again, just because it's green does not mean that it
5 cannot be developed. It would mean that it would
6 hopefully be developed in a more sensitive manner,
7 environmentally sensitive manner if it was to be
8 developed. That process is one that's going to be
9 ongoing with the counties. We provide maps to the
10 counties and then the counties will work through their
11 comprehensive land use plan and that process, through a
12 series of workshops or however they deem fit to decide
13 what it means to provide additional protection to those
14 additional areas. And each county will go through that
15 process at their own pace, county by county.

16 And I think -- the other thing that I
17 did want to mention, which I overlooked in the process
18 here, was the green areas that we have shown up here are,
19 for the most part, the vast majority are forested areas
20 in the state and they involve very, very few working
21 forests or pine plantations. For the most part, they are
22 natural forests. In a few rare cases there may be a
23 small working forest or pine plantation that may be
24 surrounded by a natural forest and for that purpose it

1 may have been included. But the vast majority of working
2 pine plantations were not included in this process. And
3 the vast majority of farm fields are not included in the
4 current green maps. We were looking at the resource,
5 such as the natural resources which may have been
6 forested, and wetlands in particular. And farm fields,
7 the vast majority are not included in this. Okay?

8 And that's all I have for the PowerPoint
9 presentation. I do have other items I would like to
10 enter into the record if I could also.

11 Our department would like to submit the
12 following items for public record also, and I have them
13 listed here. I will read through the list very briefly,
14 not the items. These are submittals and reference
15 documentation from the Department of Natural Resources
16 and Environmental Control.

17 No. 1, Open Spaces and Natural Places, a
18 copy of the PowerPoint presentation.

19 No. 2, a chronology of our workshop
20 presentations and meetings.

21 No. 3, a copy of the legal notice which
22 was in the April 2nd, 2006, News Journal and Delaware
23 State News and a copy of the April 12th legal notice
24 also. A copy of two press releases, one which was April

1 18th, 2006, the second April 26th.

2 Fifth, the DNREC website information
3 posted April 2nd, 2006. There were two items on the
4 website, one is an Open Space Council schedule and
5 background.

6 The second is the state resource area
7 maps, how they were created and copies. And also PDF
8 maps that were available on the website. Our website was
9 updated with tax parcel specific aerial photography, like
10 the three maps are in the back of the auditorium tonight.
11 These are broken down county by county but were provided
12 on a statewide basis. Those were updated on the website
13 and we were able to finally get them on there April 28th
14 so you could zoom in on the specific tax parcels and
15 underlying area photography as well.

16 Item 6, the two News Journal articles,
17 one was in the newspaper January 22, '06, edition, the
18 other was in the April 1st, '06, edition.

19 Item 7 is a copy of the Natural Areas
20 Preservation System Act, which is 7 Delaware Code,
21 Chapter 73.

22 Item 8 is a copy of the Land Protection
23 Act, which is 7 Delaware Code, Chapter 75.

24 Item 9, the Delaware 2002 land use/land

1 cover analysis.

2 Item 10, wildlife action plan from 2006
3 produced by the DNREC Division of Fish and wildlife.

4 Item 11, stream sampling data from DNREC
5 Division of Water Resources stream sampling from 1993 to
6 2003.

7 Item 12, Delaware forest habitat quality
8 assessment. Coastal plain forests on private lands;
9 March 2006; DNREC Natural Heritage and Endangered Species
10 Program.

11 Item 13, cost of sprawl in Delaware,
12 2000, the Sierra Club.

13 Item 14, Delaware strategies for state
14 policies and spending in July of 2004 and the office of
15 state planning coordination.

16 Item 15, summary of Delaware Natural
17 Heritage and Endangered Species Program.

18 Item 16, protecting Delaware's forests
19 for biodiversity, December 2003, Environmental Law
20 Institute.

21 Item 17, Green
22 Infrastructure/Biodiversity supporting programs, 2003,
23 DNREC.

24 Item 18, Livable Delaware Advisory

1 Council December 8th, 2003, meeting minutes.

2 Item 19, development of a remote site
3 selection model for assessing the quality of coastal
4 plain seasonal pond wetlands, August 31, 2005, from DNREC
5 and Natural Heritage and Endangered Species Program.

6 No. 20, protecting Delaware's natural
7 heritage, tools for biodiversity conservation, 1999,
8 Environmental Law Institute.

9 Item 21, the flora of Delaware, 2001,
10 Delaware Natural Heritage Program.

11 Item 22, green infrastructure of Delaware
12 natural resource recreation land focus area maps.

13 Item 23, geographic information system
14 mapping layers. These are reference layers not in the
15 packet, but these are layers, 2002 air photography, 1937
16 air photography, statewide wetlands mapping project, 2002
17 land use/land cover data.

18 Item 24, again this is a reference book
19 not included in here, but it was a reference. Delaware's
20 outstanding natural areas and their preservation, 1978,
21 Delaware Nature Education Society.

22 Item 25, cultural and recreational
23 services staff review of the National Register of
24 Historic Places inventory in September of 2005. These

1 were personal communications.

2 Item 26, Delaware geological survey,
3 Sandy Schenck, personal communication review of
4 significant geological sites, November 2005.

5 Item 27, Delaware Forest Service, Michael
6 Valenti, personal communication, review of forestry data,
7 August 2006.

8 Item 28, biological surveys at Blackbird
9 State Forest, 2001, Delaware Natural Heritage Program.

10 And Item 29 is a summary of the public
11 workshops. It has a list of the attendees, number of
12 attendees, number of comments received, and a copy of the
13 comment sheets that we did not receive.

14 And Item 30 are e-mail submissions for
15 the public hearing record. These are e-mails that have
16 been received to date as of 4:30 today for submission for
17 the record. That's what I have for the public record at
18 this time.

19 THE CHAIRPERSON: Thank you, Ron.

20 MR. PHILLIPS: I would like to add, as
21 item No. 31 we will be attaching the signup sheets as an
22 exhibit to the public record also. It doesn't appear
23 that too many people have signed up to speak tonight so
24 we hopefully will not run into any time limitations, but

1 what I would like to do is allot five minutes per person
2 to speak and give their comments for the record. And if
3 we -- if that's not enough time, perhaps we can allow the
4 person to pick up after everybody has had a chance to
5 speak, but I believe five minutes would be enough to put
6 your comments on the record. Additionally, the record
7 will be held open for further submissions until this
8 coming Friday, May 5th, at 4:30, if you want to submit
9 something in writing.

10 The first person who is signed up to
11 speak is --

12 THE CHAIRPERSON: Do you want to deal
13 with questions?

14 MR. PHILLIPS: I'm sorry. Anybody have
15 any questions for Mr. Vickers before we get started?
16 Yes, sir.

17 WILLIAM HARMAN: Is there a quorum
18 present?

19 MR. VICKERS: No, there is not.

20 WILLIAM HARMAN: How can you have a
21 hearing without a quorum?

22 MR. PHILLIPS: Well, sir, this is not a
23 hearing to make any decisions, sir.

24 WILLIAM HARMAN: It was advertised as a

1 hearing.

2 MR. PHILLIPS: As I said at the
3 beginning, this is a public hearing to solicit comments
4 from the public. The council members will be provided
5 with a realtime transcript of what is happening here
6 tonight, and when there is a meeting of the Open Space
7 Council, if and when any decisions are made, all of the
8 council members will have been provided with the
9 opportunity to review the transcript.

10 WILLIAM HARMAN: Will the commission or
11 the council meet as a group in public, in front of the
12 public?

13 THE CHAIRPERSON: Yes, sir.

14 WILLIAM HARMAN: When?

15 THE CHAIRPERSON: Next Tuesday, May 9th,
16 at 9 o'clock in the Senate Hearing Room in Legislative
17 Hall and those are open-to-the-public meetings.

18 WILLIAM HARMAN: And this is after
19 comments are closed?

20 THE CHAIRPERSON: Yes, sir.

21 WILLIAM HARMAN: Why wouldn't you hold
22 the comment period open until people have a chance to ask
23 questions of the council?

24 THE CHAIRPERSON: You are welcome to

1 attend the council meeting.

2 WILLIAM HARMAN: That's not the
3 question. The question is: Why wouldn't you hold the
4 comment period open until such time as the hearing is
5 taking place? I just think there is a lack of due
6 process here and I just wanted to point it out to you.

7 MR. PHILLIPS: Well, sir, your
8 objections are noted. It's our intention to conduct this
9 hearing in compliance with the applicable statutes,
10 regulations and any applicable case law.

11 WILLIAM HARMAN: How many people are on
12 the council?

13 THE CHAIRPERSON: Eleven. There is one
14 vacancy, so there are ten at present.

15 WILLIAM HARMAN: So 20 percent of the
16 council is present here tonight to hear people's
17 comments? Is that correct, two out of 10?

18 THE CHAIRPERSON: One out of ten.

19 WILLIAM HARMAN: Is there only one
20 representative?

21 THE CHAIRPERSON: I think I represent
22 the council tonight.

23 WILLIAM HARMAN: I thought both of you
24 are on the council.

1 THE CHAIRPERSON: No, he is assigned to
2 the council from the Attorney General's Office.

3 WILLIAM HARMAN: With all due respect,
4 ma'am, I think in order to govern in the sunlight, where
5 the public can have an opportunity to ask appropriate
6 questions, it would be more appropriate to have the
7 members of the council physically present in addition to
8 yourself. I think, quite frankly, this public hearing
9 lacks due process.

10 MR. PHILLIPS: Well, sir, you are -- you
11 have already been invited to attend the Open Space
12 Council meeting next Tuesday in Legislative Hall.

13 If that's the last of the comments or
14 questions, I think we can move on.

15 The first person who is signed up to
16 speak is Dominique Baron from the Delaware Nature
17 Society, I believe.

18 DOMINIQUE BARON: I'm here representing
19 the Delaware Nature Society. I'm Dominique Baron, the
20 environmental advocate for the Delaware Nature Society,
21 and Michael Riska, the executive director and myself
22 prepared comments.

23 Delaware Nature Society appreciates the
24 Department of Natural Resources and Environmental Control

1 holding this hearing and providing us the opportunity to
2 enter these comments in the public record. The Delaware
3 Nature Society is a private, nonprofit, membership
4 organization with more than 8,000 members fosters
5 understanding, appreciation, and enjoyment of the natural
6 world through education. We preserve ecologically
7 significant areas and advocate stewardship of natural
8 resources.

9 In the last few decades the amount of
10 land available to be designated as a natural area or open
11 space has decreased in the state of Delaware. Between
12 1986 and 1999, 20,000 acres of forest land were lost;
13 4,500 acres of forest were lost in just the year 2005.
14 DNREC has taken steps toward protecting the remaining
15 open spaces with their work with the advisory councils.
16 New mapping techniques, such as GIS, are enabling more
17 precise delineation of boundaries and more specific
18 detail on state habitats, associated flora and fauna.

19 The Delaware Nature Society strongly
20 supports the proposed boundaries for state resource areas
21 and natural areas and urges each of the respective
22 councils to recommend adoption of the maps to DNREC
23 secretary, John Hughes. Further, we suggest that the
24 councils and DNREC consider enhancing protection in the

1 Blackbird-Millington Corridor and upper Nanticoke region
2 by expanding the proposed boundaries to include the Green
3 Infrastructure natural resources layer.

4 The Nanticoke watershed is still largely
5 undeveloped and contains numerous rare plants and
6 animals. According to data collected by the Nature
7 Conservancy, the Nanticoke watershed is home to some 71
8 species of raise grasses, shrubs and trees, as well as 77
9 rare invertebrates and vertebrates. The
10 Blackbird-Millington Corridor includes 20,000 acres that
11 are publicly or privately held for conservation
12 management. Increasing the protection of this area now
13 will help set aside valuable plant and animal habitat.

14 Thank you for the opportunity to comment
15 on the proposed natural areas and open spaces.

16 MR. PHILLIPS: Thank you, ma'am. This
17 will be Item 32, I believe.

18 The next person is Dave Ennis.

19 DAVE ENNIS: Good evening. I am
20 representing a group of citizens without a formal charter
21 or organization, but we have adopted a title Citizens
22 Advocating a Liveable Lewes. I would like to describe
23 briefly tonight, because we do plan to submit a written
24 statement before the closure of the report, that we are

1 deeply concerned and interested in two parcels of land in
2 the city of Lewes, on the outskirts near the University
3 of Delaware off of what's known as New Road. This area
4 has a natural environment, it is currently adjacent to
5 260 acres of open space, which was purchased previously
6 by the Open Space Council, and it contains some very
7 significant cultural history of Delaware in the first
8 town.

9 I would like to read just a couple
10 comments that were acquired for me from a man who did the
11 most recent archeological study of one parcel. His name
12 is Wade Katz and he made the following statement: That
13 their study confirmed two previously identified sites
14 that were known as the old house site and the Russell
15 site, but their evaluation found a new site, which then
16 was named the Beebe site, for the Beebe Hospital owned
17 this parcel. I would like the audience to listen to this
18 next statistic: The Beebe site, yet not so well surveyed
19 as the other two sites, was occupied for at least 4,000
20 years by the American Indians before the arrival of the
21 Dutch 375 years ago. I would like to repeat that. This
22 parcel of land in the first city in the state of Delaware
23 was occupied for 4,000 years by the American Indians
24 before the arrival of the Dutch. The site also includes

1 a Delmarva addenda component dating back 2,500 years and
2 there is a woodland component that dates back to about
3 the time of the arrival of the Europeans. The Russell
4 site and the old house site have been evaluated as
5 eligible for listing in the National Register of
6 Historical places. It is also suspected that the Beebe
7 site is logically eligible for that same listing. The
8 Beebe site and the Russell site are estimated to contain
9 unmarked human remains, which are protected under
10 Delaware law, Chapter 54.

11 Now, I have a question I would like to
12 ask, if I could, and then close my comments.

13 MR. PHILLIPS: Sir, would you raise the
14 microphone up a little closer. I think you may have
15 switched it off by accident.

16 DAVE ENNIS: Thank you. Looking at the
17 maps I saw the other night at Georgetown, the area that
18 we are describing does not appear to be green, and yet in
19 a state report the parcel of land now being considered
20 for rezoning is identified as a portion of the Prime Hook
21 state resource area. And I'm a little confused as to why
22 it is not described as green on the map if it's part of a
23 state resource area. So I don't have to have an answer
24 tonight but I just want to raise that question and we

1 will also raise that question in our letter.

2 A significant portion of the land also
3 falls within the Great Marsh natural area that includes
4 riparian buffer borders on the wetlands into the Canary
5 Creek. We currently have a rezoning request for the
6 development of 200 homes on one of the two sites. There
7 is an adjoining 60 or 70 acres of land which are
8 similarly available for development if the first site is
9 rezoned, and that parcel of land is part of a greater
10 800 acres that is just outside the city that likely would
11 then be developed as well.

12 We thank you for the opportunity to make
13 comments and we do plan to submit our proposal in
14 writing. Thank you very much.

15 MR. PHILLIPS: Thank you very much,
16 Mr. Ennis. The next person who signed up to speak is
17 Rich Collins.

18 RICH COLLINS: I am Rich Collins of the
19 Positive Growth Alliance. I am the executive director.
20 We are in Lewes, Delaware, is our offices. We certainly
21 support the protection of open space and the other goals
22 of this program. But we feel that the law that you are
23 passing out, Title 7, part 7, Chapter 75 is being misused
24 at the present time. I have looked through this law

1 pretty closely and we found at least 18 references to
2 purchasing property in one way or the other.

3 From what we can understand, based on
4 the conversations at the workshop last week and also some
5 tonight, it appears that the council is going to
6 designate a very large acreage of land, far more than the
7 state could ever hope to actually acquire, and then ask
8 the counties and probably use a little coercion to try to
9 force them to enforce some sort of restrictions in the
10 land use plan. That is not what this law says at all.

11 It says at the very top, declaration of
12 policy. The only reference to how the mechanism of this
13 law will act is item No. 6. It is the public policy of
14 the state that the preservation shall be accomplished
15 through the acquisition of interest or rights in real
16 property or donation of said lands, and it talks about
17 public funds and so forth. Then when you go to the
18 purpose, the very first item, state agencies may acquire
19 any interest in real property for the following purposes,
20 and they list the variety of purposes and then it
21 concludes by saying, they may acquire property rights --
22 property or rights in real property by the use of direct
23 acquisition for cash, by purchase money mortgage, by
24 installment sale or by other methods or incentives as

1 determined by the secretary after consultation with the
2 secretary of finance. That is the only thing it says in
3 this law about how land is to be acquired or power over
4 it is to be taken.

5 Definitions -- I'm not microphone
6 friendly apparently. Definitions, item No. 4, interest
7 in real property means any right in real property not
8 limited -- I'm skipping around here, but not limited to
9 fee simple easement, remainder, future interest, lease,
10 license, covenant of any sort, option, or contractual
11 interest or right and so forth. These are legal terms.
12 Then we go to item No. 8 and this is a key, this is a
13 key, No. 8, permanent protection means the acquisition by
14 purchase, gift, grant, bequest, device, or otherwise the
15 fee of any -- or any lesser interest development right,
16 easement, covenant, or other contractual right in real
17 property in perpetuity. It seems pretty obvious to me.

18 Then we go down to No. 11, state
19 resource area means those open space lands duly
20 identified by the council and adopted by the department
21 for protection. Now, the only definition you've got of
22 protection in this law has to do with buying land or some
23 financial transaction similar to it.

24 Then we go on to the powers and duties

1 of the council. No. 3, review and recommend to the
2 department, that's DNREC, for approval, lands for
3 permanent protection according to the adopted state
4 resource areas map. I just gave you the definition of
5 permanent protection.

6 Next item, review and recommend to the
7 department for adoption a ranking system to establish
8 land acquisition or permanent protection priorities.

9 No. 6, advise and consult regarding any
10 change from permanently protected status of open space
11 lands acquired.

12 Next item, No. 8, promote and assist in
13 conjunction with state activities -- agencies, rather, in
14 the development and establishment of creative and
15 innovative methods to secure the permanent protection.
16 And then it lists the types of agencies that would help
17 you, local and regional land trusts. They buy land in
18 one way or another. Conservation and preservation
19 easements, that's usually a financial transaction.
20 Purchase of less than fee simple property rights,
21 purchase of development rights. And then there is,
22 create financial incentives for private sector
23 contributions and so forth.

24 No. 9, analyze in conjunction with the

1 department of finance, the state and local tax codes and
2 formulate incentives to encourage landowners and
3 developers to donate or retain ownership of their land in
4 an undeveloped state.

5 No. 10, you are supposed to have a
6 technical council that helps you. The last sentence of
7 that says, the group will work to maximize the use of
8 funds, the use of protection methods other than fee
9 simple acquisition to permanently protect -- there is
10 that phrase again -- statewide priority projects through
11 utilization of open space criteria and the rankings by
12 the department.

13 The next item talks about approval
14 funding.

15 MR. PHILLIPS: Mr. Collins, I note for
16 the record that your five minutes expired.

17 RICH COLLINS: Can I finish?

18 MR. HARMAN: How can you limit people to
19 five minutes?

20 MR. PHILLIPS: Everybody has an
21 opportunity to speak. If you want to speak after that,
22 you are welcome to make additional comments.

23 MR. HARMAN: How many speakers have
24 signed up?

1 MR. PHILLIPS: After Mr. Collins, there
2 are 16 more, at five minutes each, that's, what,
3 80 minutes?

4 RICH COLLINS: I made my point. This
5 law has no reference whatsoever to the county putting
6 these kind of restrictions, it has to do with purchasing,
7 in some way, the land.

8 MR. PHILLIPS: Thank you, Mr. Collins.
9 Next is Terry Higgins and maybe we can speed things up a
10 little bit if I note that the next speaker after Terry
11 Higgins is Joan Deaver; is that correct?

12 JOAN DEAVER: That's correct.

13 MR. PHILLIPS: Is Terry Higgins here?

14 TERRY HIGGINS: Coming up.

15 MR. PHILLIPS: After Joan Deaver is, I
16 can't read the name, it says the organization is private
17 property owner.

18 LISA ARBITER: Lisa Arbiter.

19 MR. PHILLIPS: You are next after Joan
20 Deaver and then R. Brubaker.

21 JOAN DEAVER: He is my husband. He
22 decided not to.

23 R. BRUBAKER: I will let her speak.

24 TERRY HIGGINS: My name is Terry

1 Higgins, and my wife and I are small farm owners in the
2 Choptank Watershed area in the southwest portion of Kent
3 County. I also wear a number of other hats. I was
4 introduced as the chairman of the Natural Areas Advisory
5 Council.

6 My particular point, and I just have one
7 important point, to me, to make. Quite frankly, I do not
8 think that the maps go far enough. I'm sure that's not
9 universally accepted in here, but I'm speaking my mind.
10 I would actually recommend inclusion of more forest and
11 farm fields to expedite the effectiveness of corridors.
12 From my understanding, you can still develop your land.
13 There is no law saying that you can't. But, quite
14 frankly, I also feel that there is an importance of
15 stewardship that each landowner has to consider and
16 understand if they are going to be effective stewards of
17 what they have. We may not believe it, but we are only
18 here for a short period of time. We need to leave this
19 place better when we pass it on than what we found it to
20 be.

21 Thank you.

22 MR. PHILLIPS: Thank you, Mr. Higgins.
23 Miss Deaver.

24 JOAN DEAVER: Yeah. Hi, my name is Joan

1 Deaver and I am president of Citizens For a Better
2 Sussex, a group that's existed for about a year and a
3 half now. It's a nonprofit, nonpartisan group for the
4 entire county of Sussex. And I want to congratulate you
5 on this beautiful presentation and on the work that you
6 are doing. We would like to participate, this is our
7 first meeting with you all and we are just getting
8 involved. Many of our members are from eastern Sussex
9 and we are desperate to save any kind of land that can be
10 saved. We are living in a mindless development rage.
11 And Mr. Collins may have already answered my question,
12 which was, what if the county does not recognize your
13 recommendations? What is it that people can do about
14 that?

15 THE CHAIRPERSON: There will be county
16 hearings on any proposals for regulation.

17 JOAN DEEVER: Regulation?

18 THE CHAIRPERSON: Or whatever kind of
19 restrictions or zoning they choose to come up with.

20 JOAN DEEVER: Correct. But it would be
21 up to the county to decide whether or not to pay
22 attention to you; is that right?

23 THE CHAIRPERSON: Yes, that is correct.

24 JOAN DEEVER: That's right. Because

1 this law is more or less of a recommendation from the
2 state, if I understand correctly. I am brand new at this
3 so please --

4 THE CHAIRPERSON: These maps are
5 informational.

6 JOAN DEEVER: That's a shame. And I'm
7 sorry that I didn't see anything on eastern Sussex, and I
8 hope it's not too late. And also, if you have a vacancy,
9 I hope you will put someone on there from Sussex County
10 because we are anxious to participate and we have a lot
11 of volunteer hours to donate. We care very much about
12 our county. We care about the Nanticoke River that the
13 county wants to dredge and we are concerned about the
14 surrounding areas of the Nanticoke River -- let's put it
15 this way -- that the county wants to buy land for dredge
16 soils. Of course the department of Corps of Engineers
17 would be doing the work, but we are concerned about that
18 too. Thank you very much for the wonderful job you are
19 doing.

20 MR. PHILLIPS: Thank you, Ms. Deaver.
21 Ms. Arbiter.

22 LISA ARBITER: First of all, I would
23 like to say that I used to be an owner of 34 acres
24 located near the Beck Pond area. We are now down to

1 24.85 acres. My point is, I have come to find that my
2 land has been included in this program. I am completely
3 surrounded by a trailer court with many people in it that
4 are using my property and located next to the townhouses
5 complex that towers over my property on the south side of
6 me including 120 homes that are also using my property.
7 I have also found that now I feel like the state and the
8 county have been using my property. I know that I have
9 tried hard to find out what kind of criteria that my
10 property is meeting. I realize I am the only one left in
11 the area, my parents have owned the property since 1953,
12 both are now deceased.

13 2001, my property went through a
14 down-zoning, before the unified development code we had
15 always been R2. Then we were given ST zoning. And in
16 2001, the county decided we needed to be down-zoned to S,
17 for some reason, even though we had been completely
18 surrounded by development. This is something that we
19 have listened to as property owners come in around us.
20 We also have a sewer line across this property. The
21 sewer line was put on our property against the objections
22 of my parents because they wanted it on the other side of
23 the property because Ray Magness owned the property which
24 is now Heather Woods Development. Unfortunately, we were

1 stuck with the sewer line on our side of the property.

2 We were not paid the dollars we were owed for the

3 easement.

4 This property sewer line has been redone

5 in 1996. We listened to the sewage pump around the

6 manholes for seven months. That's something hard to live

7 with when you are working shift work. We worked very

8 hard on our property. We took very few vacations

9 because, if you know the area like I do, you have to keep

10 pretty good track of what you have on your property to

11 make sure it stays there.

12 In 2003, I decided to put the property

13 on the market. I found, through a developer, what had

14 encompassed, what was going on with my property, and I

15 have plenty of maps to prove it. I have everything that

16 my parents have ever kept on their property and I also

17 have a major sewer line through my property. I would

18 like to see that this property, and it's owned by Arbiter

19 Family LP, be somewhat removed or completely removed from

20 either of these two maps. It's a 25-acre piece of

21 forested woodland that is now in a commercial forest

22 plantation. As we speak, I have been harvesting trees

23 because of the fact of what's been happening with my

24 property. This is not something I thought I should have

1 stooped to, but we have, and I have found that nobody has
2 wanted to purchase my property. I don't think that any
3 trust fund -- we're going to have to put up with. My
4 property has been enduring because of the fact that
5 everybody surrounds it.

6 We would like to see some paperwork
7 regarding what kind of criteria we are meeting and the
8 designation, but we would like to have our property
9 removed from this process. This has kept us from being
10 able to sell our property. We lost a developer. And I'm
11 not saying that I should have my property extremely
12 developed, and there are some nice places, but I think
13 that we should take a better look at what we are looking
14 at here in the areas which of are preserved. I am very
15 close to putting my farm -- and have the police have
16 quite a time trying to make sure that people are not
17 using our property and tell us we should move because
18 they can't guarantee our safety. Thank you very much for
19 listening to me.

20 MR. PHILLIPS: Thank you, Ms. Arbiter.

21 Just so the record is clear,
22 Mr. Brubaker, you were signed up to speak but you no
23 longer wish to?

24 R. BRUBAKER: One thing I would like to

1 say.

2 MR. PHILLIPS: All right. Come down
3 front, please. After that, there is a name Henry Carey,
4 I believe it is, but there is no indication of whether
5 Mr. Carey wishes to speak. Am I pronouncing that right?

6 HENRY CAREY: Right.

7 MR. PHILLIPS: And you don't wish to
8 speak, sir?

9 HENRY CAREY: Not at this time.

10 MR. PHILLIPS: Thank you. The next
11 speaker -- I will leave that until Mr. Brubaker finishes.

12 R. BRUBAKER: The only thing I would
13 like to say is, we never had any paperwork stating we
14 were in a CNA and we were there for over 50 years, and we
15 would like to know how it could happen without us knowing
16 about it. And that's why we think it should be removed,
17 because we never not any written form or statement, any
18 kind of hearing, nothing. That's why we feel we should
19 be removed from that. And we asked them if they wanted
20 to purchase it, acquire it. And they said, no, they
21 don't want to buy it. Now I can't sell it. How do we
22 sell our property? Thank you for listening to us.

23 MR. PHILLIPS: Thank you, Mr. Brubaker.

24 THE CHAIRPERSON: A public hearing is a

1 one-way conversation. I can respond to -- with
2 information, but -- and we receive your comments. I do
3 think that questions that pertain to the county can be
4 referred from this hearing to the county. We can do that
5 as a courtesy.

6 R. BRUBAKER: We would have did
7 something with our property if we knew it was labeled.
8 We can't put any more money into our house because we
9 can't sell it. We didn't know about that. My wife put
10 an addition on, they had ample time to tell us and they
11 didn't tell us anything. That's undue process.

12 THE CHAIRPERSON: The Delaware Open
13 Space Council or the Natural Areas Council doesn't deal
14 with that, that's the county, but we can refer your
15 comment.

16 R. BRUBAKER: Thank you.

17 MR. PHILLIPS: Next there is a Chris
18 Cartanza who indicated that maybe he might want to speak.
19 Mr. Cartanza? Is that you, sir?

20 CHRIS CARTANZA: Yes.

21 MR. PHILLIPS: I guess you do want to
22 speak.

23 CHRIS CARTANZA: Yes. While I'm here, I
24 might as well. I've spoken at everything else.

1 Again, I keep coming to these meetings
2 and leaving in dismay and hearing dismay. We have a farm
3 out on Route 9. We have been here approximately for
4 50 years, 2,200 acres, and when I come to these meetings
5 I think, do we own this land? I'm not quite sure if
6 DelDOT does, levy court, the Air Base, I'm not quite sure
7 who owns it, but it seems at every turn there is someone
8 else trying to inflict their powers over the property and
9 call us stewards of the land. My father killed himself
10 and died on the farm trying to be a steward of the land.
11 And I'm glad he died before any of this stuff started
12 happening because I believe this is the kind of stuff
13 that can kill a farmer.

14 This Open Space Council, Open Space, to
15 my knowledge, has not paid one bill on my farm. I see
16 people on this Open Space Council that have received
17 hundreds of thousands of dollars for marshland that was
18 never going to be farmed, never going to be developed.
19 So I believe some of the people on this council, I think
20 there is an issue there.

21 And I believe I asked this particular gentleman, Mr.
22 Holden, he called me one day trying to convince me to
23 change my mind about speaking out against things like
24 this, and I said, well, if you needed that land to pay

1 your bills, you might have a different opinion. His
2 answer was, yes, I might. So I was just a little taken
3 aback by that because a lot of these people who speak out
4 for these things, if they needed the land to pay their
5 bills, when the price of the product has been the same
6 for 30 years, and the only thing we have is the lands to
7 go up in value, and every time you turn around there is
8 another layer that everyone is trying to put on top of
9 everything, my opinion is I think it's going to be
10 devalued to the point -- we are not even going to be able
11 to know where to walk on the property or what the case
12 may be. And DNREC might look wonderful by saying, we are
13 just putting up the maps, the open space thing, we are
14 putting up the maps and the county is going to make a
15 decision on what happens, is kind of passing the buck.

16 And I'm not quite sure, like I said, what
17 I'm going to end up owning, if anything, of 2,200 acres
18 by the time all these agencies get done putting different
19 layers and different ordinances. And I'm to the point
20 now where I might not even have enough land over 2200
21 acres to build homes for my children.

22 It's kind of unbelievable to me.

23 I'm here to speak out against anything
24 that is going to infringe on any property rights of the

1 farmer who is trying to put food in the mouths of
2 everyone who has eaten today, your breakfast, lunch, and
3 dinner. On that wonderful slide show all I saw were
4 birds, I didn't see any tractors or any farmland.

5 MR. PHILLIPS: Thank you, Mr. Cartanza.

6 Next there is an H. Conaway who indicated maybe. No?

7 H. CONAWAY: Not at this time.

8 MR. PHILLIPS: Thank you.

9 After that, the next person signed up to
10 speak is Mary Moore.

11 MARY MOORE: No.

12 MR. PHILLIPS: Thank you, ma'am.

13 Roger Jones.

14 ROGER JONES: Good evening. My name is
15 Roger Jones. I'm the vice president and state director
16 of the Nature Conservancy's Delaware Chapter. I have
17 written comments for the record that I will present to
18 you after my comments. I write to express the Nature
19 Conservancy's conditional support for the recently
20 updated state resource area maps that have been completed
21 by the Department of Natural Resources and Environmental
22 Control pursuant to the Delaware Land Protection Act.
23 This recent update fits nicely into ongoing efforts by
24 the state to conserve and protect the state's natural

1 resources. The maps do a reasonably good job in
2 identifying priority areas that should be considered by
3 the Open Space Council when acquiring and preserving open
4 space for the citizens of Delaware.

5 In reviewing the maps, my staff found
6 that they encompassed most areas identified as
7 conservation priorities by the Nature Conservancy with
8 the exception of two very special places. I strongly
9 recommend to you and members of the Open Space Council
10 that the maps be revised and more fully recognize the
11 unique natural resource values found in and around
12 forested corridors of the Blackbird-Millington and upper
13 Nanticoke River, Ellendale-Redden areas. I am concerned
14 that the proposed state resource area coverage does not
15 adequately protect the current ecological function that
16 are known to exist in these two corridors. I Recommend
17 that the original green infrastructure map coverage for
18 those specific areas be consulted, with the net effect
19 being to expand the state resource area designated lands
20 in these areas to create more continuous coverage within
21 the corridors.

22 A proposed alternative state resource
23 area map prepared by the state and at the request of the
24 Nature Conservancy is attached and offered for your

1 consideration at this time.

2 Inclusive of these recommendations we
3 fully support the adoption of the updated state resource
4 area maps by the Open Space Council. The Nature
5 Conservancy recognizes that these maps will be used in
6 consultation with all three counties in effectiveness as
7 they update the prospective comprehensive plans. Primary
8 responsibility for implementing land use requirements for
9 these maps fall to the counties as Delaware Code requires
10 them to adopt zoning ordinances that enact these
11 guidelines and standards within 18 months after receipt
12 of state resource area maps from the department.

13 We encourage the department to work in
14 partnership with the counties to develop ordinances that
15 incorporate market-based incentives, as well as
16 regulatory provisions for private landowners to preserve
17 and protect ecological functions on their maps. Thank
18 you very much.

19 THE CHAIRPERSON: Are you referring to
20 TDR?

21 ROGER JONES: TDRs and other mechanics
22 which could include cost-share programs.

23 MR. PHILLIPS: Thank you, Mr. Jones.
24 The next person who signed up to speak is Ron Vickers. I

1 assume you already took care of that. After that we have
2 C. Scott Kidner.

3 C. SCOTT KIDNER: Scott Kidner on behalf
4 of various business interests including the Home Builders
5 Association and the Delaware Association of Builders.
6 First and foremost, I wish to applaud the Division of
7 Natural Resources for their efforts in moving forward in
8 this manner. Clearly, any time ink gets put on paper and
9 we get representation of what you all are trying to
10 accomplish, it allows us to make more reasonable
11 decisions. And I certainly appreciate the deputy
12 secretary and others for providing some detailed
13 information for our constituencies to try to figure out
14 exactly how this is going to impact a fairly diverse and
15 large economy of this state.

16 However, some general observations and
17 some specific questions. First, that the current statute
18 as defined says you are to provide this information
19 within one year or prior to one year of the comp plans
20 being approved. It is clear that we are going to be out
21 of cycle with, I believe, Kent County and New Castle
22 County, so there is some cycle problem with their comp
23 plans and hoping those plans are being dropped off at the
24 office of statewide planning.

1 Second, it was brought forward briefly
2 about the family with, I guess, the 24 acres. I am
3 directing -- or not directing, madam, but I am suggesting
4 the Open Space Council clearly take some steps to notify
5 the property owners. We are talking about 94,000 acres
6 that you are going to take out of play.
7 24 percent are already developed, another 24 percent are
8 in essentially protected, currently permanent protection,
9 and you are adding another 8 percent. That puts us up
10 at, I guess, 56 percent of the state will be in some
11 level of the protection, about 94,000 acres.

12 Can you imagine how many farmers,
13 property owners don't get the Delaware State News, don't
14 get the News Journal, and we have one month, essentially
15 one month. If you don't get those newspapers, you do not
16 get individual notification, one month in various forms
17 to respond to this document controlling 94,000 acres.
18 I'm not going to argue that there are not specific areas
19 within those SRAs that should be protected, clearly. But
20 I think there is an issue and a duty to the Open Space
21 Council to notify as many individual property owners that
22 you clearly have identified are now contained in these
23 SRAs that heretofore were not, have no understanding that
24 they will have a new overlay placed on them as to what

1 they will be able to do with their ground, because that
2 is the intent. The intent is to say, we are now creating
3 these SRAs, we will hand to the counties, and counties,
4 by statute, we are telling you that you must create a new
5 overlay with all these lands that will restrict, because
6 if you aren't going to restrict, then what have we
7 accomplished if we are trying to protect the asset.

8 Additionally, I'm asking for two more
9 overlays be presented to the Open Space Council for your
10 consideration. I suggest that you take a look at the
11 local zoning code and specifically the SR code of New
12 Castle County and Kent County's new coastal zone
13 ordinance. Both those have, for all intents and
14 purposes, down-zoned vast quantities of land that, in
15 fact, I believe create almost another conservation
16 easement because it removes them from any kind of
17 conversion. So I would suggest that the Open Space
18 Council overlay one more.

19 And I have another observation, I think
20 you also need to take the overlay of the state strategy
21 spending maps, levels 1 through 4, and determine where
22 the conflicts exist in current comp plans, county comp
23 plans, as opposed to level 1 through 4 spending areas and
24 now your SRA areas on top of that. It gets a little

1 confusing, you might have to create some new colors, but
2 I think that is critical for you all, the Open Space
3 Council to take a look.

4 Finally, a couple of additional
5 comments, one of the things under powers and duties, 7506
6 Item 4 says, Review and recommend to the department for
7 adoption a ranking system to establish land acquisition.
8 Where is the priority within the SRA? Clearly, the state
9 does not have the financial resources -- I hear I'm
10 getting the red light -- the financial resources to
11 purchase everything that we have identified in these
12 94,000 acres. Where is the priority of what lands we
13 really think are at the top of the list versus the bottom
14 of the list and work towards the acquisition and the
15 various mechanisms for those property owners? The Nature
16 Conservancy brought up a great point about the Redden
17 State Forest and Blackbird. Clearly, two high value
18 resource areas, would it not serve the Open Space Council
19 to identify that, they are No. 1 and No. 2 priorities,
20 and spend the next ten years and assets you have got
21 available to get that squared away?

22 Also, I have great concern that the Open
23 Space Council will send forth to the secretary these
24 maps. What you are asking us to do is bet on the comp.

1 You are asking us to bet on the fact that the counties
2 will produce various ordinances within 18 months. The
3 reason there is fear and anguish out here for property
4 owners is because who knows exactly what will occur?
5 Given the current political environment that exists at
6 various levels of government, that is a hard thing for
7 the business interests I represent to take at face value.
8 Unfortunately, again, it's one of these "trust us"
9 scenarios. You, the Open Space Council, are going to
10 say, don't worry, it's not us, it's the county that's
11 going to produce the ordinances. Yet, we have no idea
12 what the teeth, what the enable -- not enabling, the
13 mandates or whatever items are going to be used at the
14 county level to implement what you are telling them that
15 they need to do. I think it is problematic from the
16 interests I represent. The comments I provided will be
17 written and provided to you all before Friday.

18 MR. PHILLIPS: Thank you, Mr. Kidner.

19 C. SCOTT KIDNER: Thank you.

20 MR. PHILLIPS: Next person signed up to
21 speak appears to be -- I really can't read it. I think
22 the last name may be Harman. It lists an address of
23 Camden, Delaware.

24 WILLIAM HARMAN: I signed up, Harman is

1 White Oak Road. Maybe there is another Harman.

2 MR. PHILLIPS: It could be Farnan, I
3 really don't know. I can't read the name. Is there
4 anybody who signed up on what was the last sheet, second
5 from the top, who wants to speak?

6 (No response.)

7 MEMBER OF AUDIENCE: I will take a
8 couple more minutes.

9 MR. PHILLIPS: There is also the next
10 person who had signed up is, but didn't indicate a
11 preference, is Bart Dukes.

12 BART DUKES: I don't need to speak
13 tonight.

14 MR. PHILLIPS: All right. Thank you,
15 sir.

16 Now, there is a Chester Dickerson,
17 didn't indicate whether he wishes to speak.

18 CHESTER DICKERSON: No.

19 MR. PHILLIPS: No? Thank you, sir.

20 A representative from the Sierra Club
21 has requested time. Sir, come on down.

22 WILLIAM HARMAN: This gentleman is not
23 up yet? He is at bat.

24 MR. PHILLIPS: Okay. Can you state your

1 name?

2 WILLIAM HARMAN: Yes. Bill Harman. I
3 just wanted to take this opportunity to point out in
4 addition to the points that have been made by Rich
5 Collins that the language of the legislation is full of
6 references to compensation. And to the extent to which
7 this is an unlawful taking or a regulatory taking without
8 compensation, it violates not only the federal
9 constitution, it violates the Delaware constitution. I
10 would also suggest that, with all due respect to The
11 Chair, that this is a business meeting and you lack a
12 quorum. The quorum is five people under the terms of the
13 statute itself.

14 The other point I would make and I think
15 it was certainly illustrate bide Mr. Brubaker, and I
16 think it's an excellent point. If there is a taking of
17 property, and there is a taking because there is a
18 diminution of financial value for all landowners who are
19 put in this green belt, if you want to call it that,
20 there is a lack of notification. And each landowner
21 should have received a certified letter notifying them
22 that impairment to their property was about to take
23 place.

24 The other point I would really like to

1 ask is if DNREC should produce, and as taxpayers we are
2 entitled to have, a listing of all the properties that
3 they propose to include in the additional overlay. It's
4 preposterous, nobody can figure out whether their
5 property is in or out. There ought to be an opportunity
6 for everyone to be notified that their property is in
7 this new scheme.

8 The other point I would make is, you all
9 received a stack of documents this evening, nobody here
10 has seen those, I don't believe, except the people
11 submitting them from the Sierra Club or the Nature
12 Conservancy, copies of those should be made available to
13 the public and anyone who requests them. And we would
14 certainly like an opportunity to read those documents
15 before the submission deadline on the 5th.

16 The other broader question I would raise
17 is, and as I've read the statute, I failed to see a
18 public purpose. It is very difficult for me to
19 understand the public purpose in the confiscation of
20 property rights for -- this is not a new police power
21 which is held normally, exercise of government power,
22 this is to preserve open space. And that's a very vague
23 public purpose, and I don't think is supported by the law
24 or the right of the State. People have constitutional

1 rights. They are entitled to due process and they are
2 entitled to be justly compensated for property that is
3 taken from them by the State.

4 And I find it astounding that DNREC
5 would be working hand in glove with the county,
6 submitting this to the county, putting a gun to the
7 counties head so that the counties have to approve these
8 plans in 18 months. In a sense, there has been a
9 delegation to an administrative agency not elected, I
10 point out, by the voters or the taxpayers, not elected,
11 which is dictating the terms under which counties must
12 zone their property or forfeit certain financial
13 consideration. I think that is inappropriate.

14 I think if that's an issue, it should be
15 submitted to the voters and let the landowners speak. I
16 think this is a travesty. You will be taking up to
17 one-third of all the land. I mean, this is astounding to
18 me. This is -- you know, this is not Cuba. This is not
19 some country where you can just simply walk in and offer
20 somebody a pittance for their land. I have listened to
21 these Brubakers and my heart really goes out to them.
22 That is extraordinary. I was shown a map outside that
23 showed they are completely surrounded by development and
24 their rights have been taken away in a very arbitrary way

1 without proper legal notice.

2 R. BRUBAKER: It is under the Arbiters,
3 my wife's family's property name.

4 WILLIAM HARMAN: Thank you very much. I
5 think there needs to be more consideration to the needs
6 of the landowners, the property owners and the farmers.
7 I am not being critical, I see the Open Space Council is
8 heavily weighted toward New Castle County, they are
9 50 percent of the members, as I count them up, from
10 Montchanin to Breck's Mill to Newark, et cetera, that I
11 don't see enough representation of people who own land in
12 Kent and Sussex County on the Open Space Council.

13 Thank you very much for the opportunity
14 to speak.

15 MR. PHILLIPS: Thank you very much,
16 Mr. Harman.

17 THE CHAIRPERSON: I think
18 informationally the only thing that I can add would be
19 that we would happy to place all of these documents that
20 have been submitted to the record that DNREC used on a
21 reference shelf in the Dover library and made available
22 to the public.

23 WILLIAM HARMAN: Excuse me, may I
24 respond to that? And we are to go there and to read them

1 in the library? We are not permitted to copy them or
2 give them to our attorneys to do some legal briefs on?

3 I don't understand why we don't have an
4 absolute right, the taxpayers' money paid for those
5 studies. They should be been made available. It
6 seems -- we are all willing to pay for having copies
7 made, but we have an absolute right to see those
8 documents and not wait in line at some public library.
9 Excuse me.

10 Thank you, ma'am.

11 MR. PHILLIPS: Sir, you can have the
12 list. It's also possible that you could submit a written
13 request under the Freedom of Information Act for all
14 of these records.

15 WILLIAM HARMAN: Thank you.

16 LISA ARBITER: Would we be able to
17 receive all of this information before you have your
18 final phase because my attorney has been having a hard
19 time getting information as well?

20 MR. PHILLIPS: That I don't know. If
21 it's just copying these documents -- I don't want to
22 speak on anybody's behalf. It seems to me that that pile
23 could be copied by the end of this week or before the end
24 of this week. Actually, you just need the list. These

1 are all documents that are available other places.

2 LISA ARBITER: Before people leave,
3 85 percent of my land has been taken and yet it didn't
4 matter because that electric went through, it didn't
5 matter, the sewer lines went through it twice. I didn't
6 see anybody from DNREC gown down there when the sewer
7 line was all over my property and outside its bound and
8 it's documented by the Delaware Nature Society. And it's
9 been years and years coming to find out this has happened
10 and I also lost my mom about the same time this was going
11 on. So was property fairly appraised? And how do you
12 appraise a property like this? And why should a person
13 have to stoop to cutting their trees down for it?

14 It's absolutely disgusting and I have
15 been an environmental conservation person because I have
16 been living there all my life. I know what grows there
17 and I know who is using my property, and it's not fair.
18 After this goes through, will the Division of Natural
19 Resources come patrol my property because the state
20 police don't want to do it? And when I watch the things
21 walking off my property and going to people's aquariums
22 in the trailer park, how do I explain it once you take it
23 from this environment, it's done? Just standing there,
24 spinning wheels. And it's unbelievable because it's

1 just -- it's such a small piece of property considering
2 how many other acres are around. And there are other
3 acres in the area that are more continuous forest and the
4 County doesn't even bother to pay attention to the fact
5 that the trees are being cut off the property literally.
6 And that's 100 acres of Beck's Pond on the western side
7 that no one has been allowed to use now for 30 years, but
8 they can use my property every day.

9 It's absolutely disgusting. And then,
10 you know, when you make up your mind and you want to
11 leave and you find out you can't.

12 MR. PHILLIPS: Thank you, ma'am. Next
13 is the Sierra Club representative. What is your last
14 name, sir?

15 CARL SOLBERG: Carl Solberg.

16 MR. PHILLIPS: Carl Solberg. Thank you.

17 CARL SOLBERG: Good evening. Thank you
18 very much for the opportunity to speak tonight at the
19 Delaware Land Protection Act hearing. As Land Use Chair
20 of the Delaware Sierra Club, I will offer these
21 preliminary remarks with amplified written comments to be
22 submitted later, because I think full disclosure is
23 appropriate in my case, I want to offer it for anyone who
24 may assume that should I remain silent regarding my other

1 affiliations, then those relationships might be operative
2 in this venue, when they are not.

3 I sit on the Delaware Natural Areas
4 Advisory Council as a Kent County farm owner, Delaware
5 Nutrient Management Commission representing Sierra Club.
6 For eight years I functioned as the Open Space, Parks,
7 Conservation, and Greenway Planner for Kent County, and I
8 am now the parks director for Kent County government.

9 These responsibilities only speak to my
10 competency in making these comments, but I want to remind
11 you that I speak only on behalf of the Delaware Chapter
12 of Sierra as a private citizen of Kent County.

13 I want to compliment Ron Vickers, Matt
14 Chesser and his team in the Planning and Preservation
15 Section, all of them in the back, for their efforts to
16 prudently and professionally address the goals of the
17 Open Space Natural Areas Program. They have done a great
18 job. Delaware is well served by their dedication. I
19 note the presence of many of the folks in the back. We
20 applaud DNREC's dedication to impartial science in the
21 process of developing these maps pursuant to the
22 requirements of Chapter 75.

23 Delaware Sierra believes that the
24 Proposed Natural Areas Maps generally offer a balanced

1 and conservative representation of the intentions of the
2 controlling statute at Chapter 73 and they largely
3 represent appropriate sources and inputs. With only
4 minor adjustments, we think they can be improved but used
5 for the future of the Natural Areas Advisory Council. I
6 do note that the passage of time during the development
7 of all of these maps has permitted the loss and
8 fragmentation of thousand acres of otherwise potential
9 Delaware natural areas. Conserving what remains has
10 become more critical than the framers of the statute may
11 have ever originally imagined.

12 Alternatively, my comments specifically
13 request that the department's proposed state resource
14 maps at least provide some moderate adjustments to more
15 accurately reflect the community and ecological services
16 that the Delaware Land Protection Act envisioned and
17 articulated are the intended purpose of these maps. The
18 mapping state resource areas is a descriptive analytic
19 process but we ask that you neither disregard nor
20 overemphasize the regulatory intentions of the statute.

21 Delaware does not for coordinate land
22 use planning for cohesive and comprehensive statutory
23 authority. Planning, preservation and conservation occur
24 iteratively across -- between many levels of government,

1 agencies and programs. I could list them if you wanted
2 to listen to that list, but you don't. When this
3 iterative nature of Delaware land use planning scheme
4 will collectively rely on a single data set, as in the
5 case of the provisions of Chapter 75, we should look
6 beyond the most immediate level of land use cover
7 descriptions and create maps of the landscape as it can
8 actually function under the intended diverse authorities
9 under the statute.

10 As they are presently proposed, the SRAs
11 successfully capture the essential natural components,
12 but they offer an excess of mapping specificity and
13 detail. The SRA maps jump from hedgerow to forest edge
14 to ditch bank and roadside in an overly zealous attempt
15 to capture only the very most individually defensible
16 land coverage. It is superior detailed work, but it
17 fails to anticipate the general uses and intentions for
18 county land use planning at Section 7508. You need to
19 create a more uniform and flowing overlay district for
20 the counties to propose whatever methods they wish to
21 preserve with development rights, to protect private
22 property rights.

23 This type of error is my comment are
24 used frequently in land use planning when we fail to

1 adequately map and zone for broad transition areas around
2 town centers, growth zone, older spot zoning and the
3 like.

4 We are confident that the open space
5 program will address these SRA maps in a useful and
6 effective and inclusive fashion, meaning that if it's a
7 small farm field inclusion, you are probably attempt to
8 acquire it. We are comfortable with the role that the
9 State Comprehensive Outdoor Recreation Plan will play in
10 implementing the State Trust Fund and other sources of
11 community assistance. But the thrust and intention of
12 Section 7508 will not be adequately served by the
13 excessive details and delimitation to the exclusion of
14 small margins, that is, small farm fields embedded act
15 fields, buffers, transition habitats around the proposed
16 state natural areas. We need to include these in a more
17 uniform overlay so the counties can develop more rational
18 or smoothly volatile overlay districts.

19 We could lead to the counties and the
20 municipalities all of the issues associated with
21 ordinance development and subsequent protection of
22 property rights and public hearing and due diligence that
23 is intended on the development of such ordinances. We
24 can leave to the counties the revisions, variances and

1 waivers for cause in the same way that we do for
2 floodplains and wetland setbacks mapping. We should
3 leave to the counties and municipalities the constituent
4 representation of preferences for tools to preserve
5 resources and property values.

6 If you wish, I will leave my last half
7 page until everyone finishes.

8 MR. PHILLIPS: Everybody else that has
9 gone past five minutes has had a few grace seconds, so
10 carry on, sir.

11 MR. SOLBERG: I will hit it quick.
12 Section 7508 makes sufficiently generous and repeated
13 references to performance standards and development
14 rights to be preserved through TDRs and other methods.
15 We should not diminish the effect of conservation biology
16 and science in the mapping process. We should not offer
17 anticipatory dispensation from the known synergies that
18 exist between forest coverage, meadow, margin farm fields
19 and other buffers of the proposed state natural areas.
20 The SRAs should provide clarity to the county and should
21 not be so overly specific to jump from hedgerow to
22 hedgerow to hedgerow.

23 There are numerous examples of this
24 lopsided impact of small farm fields throughout the

1 Blackbird-Millington Conservation Corridor and elsewhere
2 within each of the three counties that I found in
3 reviewing the maps. I suggest that the area between
4 Lloyd Guessford Road, Dexter Corner Road, VanDyke
5 Greenspring and Blackbird Station Roads will produce
6 about a half dozen such specific instances of this
7 relationship I'm talking about, in which small marginal
8 fields, pasture, crop, embedded fields really should be
9 incorporated into a state resource area to buffer the
10 natural area within it.

11 I will also note that within the same
12 area I just described you will find many appropriate
13 places where DNREC has excluded any farm field, pasture
14 or other ag crops because they contain either
15 constructed, real property improvements or they contain
16 functional, viable, long-term agriculture.

17 While there is clearly no practical way
18 to further delimit forestlands internally from their
19 perimeters when they are impaired by embedded farmfields,
20 we can easily capture the effect, and therefore the
21 planning and preservation purposes of Section 7508 by
22 including all these small, additional embedded crop
23 fields and buffers around our natural areas.

24 The Delaware Chapter of Sierra will

1 provide supplemental comments at a later date. Thank you
2 very much.

3 MR. PHILLIPS: Thank you, Mr. Solberg.
4 The final speaker who is signed up is Mr. Nick
5 DiPasquale.

6 NICK DiPASQUALE: Thank you. My name is
7 Nick DiPasquale. I am the conservation chair for the
8 Delaware Audubon, and I will be presenting comments on
9 behalf of Delaware Audubon, and I'm also the president of
10 the Kent County Conservancy, but my comments tonight do
11 not represent the Conservancy.

12 First, on behalf of the board of
13 directors of Delaware Audubon, I would like to express
14 our thanks to the Department of Natural Resources and to
15 the Open Space Advisory Council for taking public comment
16 on the development of the proposed state resource area
17 maps in accordance with the State Land Protection Act.
18 And I would point out that three public meetings were
19 held, workshops that were given by the Department to give
20 presentations to the public so they can have a better
21 sense of what the maps are based on and what the law
22 requires. And I appreciate that input.

23 Delaware Audubon believes that the state
24 resource areas map will provide greater definition to

1 state and local land use planners, developers and
2 conservation organizations in identifying the highest
3 priority areas for preservation and restoration. We were
4 pleased to learn that almost two-thirds of the land
5 identified for inclusion in the SRA maps already have
6 been protected. The proposed SRA maps represent less
7 than one-quarter of the State's land mass. Delaware
8 Audubon encourages the Open Space Council to take a
9 broader view of the State resource areas by using maps
10 generated by the Governor's Green Infrastructure
11 Committee to identify additional State resource area
12 land. This ensures that the ecological values and
13 services provided by these areas will benefit from the
14 additional protections adopted under subsequent County
15 ordinances.

16 In doing so, the ecologically important
17 areas in the Nanticoke watershed, the Blackbird
18 Millington corridor and the forest and wetlands of Redden
19 and Ellendale will be afforded additional protection.
20 Several commenters tonight have made that point, and I
21 would like to reemphasize that.

22 Delaware Audubon also recommends that
23 lands identified under other programs such as the
24 Northern Delaware Wetland Rehabilitation Program be

1 incorporated into the State resource area maps. The
2 Department already has identified over 10,000 acres of
3 title marsh for restoration because of the important
4 ecological functions they provide. While many of these
5 wetlands have already been included in the SRAs, we
6 believe that all wetlands identified for restoration be
7 included, not only those lands that are intact and can be
8 preserved, but also lands that are degraded that perform
9 ecological functions ought to be identified for
10 restoration purposes.

11 Delaware Audubon believes that it's
12 important for local officials to appreciate the magnitude
13 of the economic savings that taxpayers enjoy by the
14 ecological services that these areas provide in the form
15 of improved water and air quality, flood control, soil
16 erosion, climate moderation, pollination, seed dispersal,
17 decomposition and detoxification of waste and a variety
18 of other ecological services which essentially are
19 provided for free by nature, and these are areas I think
20 that are certainly worthy of protection. The economic
21 value of these services should be factored into land-use
22 decision making.

23 Finally, Delaware Audubon supports the
24 Department's efforts to provide technical assistance to

1 the counties as they initiate the process to develop and
2 adopt ordinances to provide higher levels of protection
3 to these critically important areas. And I understand
4 the Department is going to make contractor services
5 available to help the counties in this regard, and we
6 applaud them for that effort.

7 Finally, Delaware Audubon appreciates
8 the opportunity to make comments to the members of the
9 Open Space Advisory Council as you deliberate on this
10 issue and we plan to submit written comments before the
11 May 5th deadline.

12 MR. PHILLIPS: Thank you, Mr.
13 DiPasquale. Is there anyone who came in after the signup
14 sheets were brought down to me and wishes to add
15 something further?

16 (No response.)

17 Does anyone wish to sign up at this
18 point?

19 (No response.)

20 Does anybody have a question for either
21 The Chair or the council or for Mr. Vickers?

22 (No response.)

23 That being said, thank you all for
24 attending.

1 MS. BURBAGE: One quick question.

2 MR. PHILLIPS: Would you identify
3 yourself, please.

4 MS. BURBAGE: My name is Joanne Burbage.
5 I stated that I would not speak and I am here trembling,
6 however. I live east of Route 1 in Milford. The City of
7 Milford has plans to annex this area. I know nothing
8 about the political process, but it has occurred very
9 quickly, and in just a few weeks. And the area that's
10 being annexed is rural, agricultural and farmland. And
11 the plans for it call for possibility of high density
12 housing, possibly a hospital, maybe schools and other
13 commercial things. And a group of us who were concerned
14 about this coming so quickly without a lot of thought or
15 preparation were wondering if in any way -- since some of
16 this is close to the Mispillion River, close to Slaughter
17 Neck, close to Slaughter Beach, close to Milford Neck,
18 wildlife areas, if we were included in this resource
19 area.

20 And I don't see a map. I have gotten
21 wonderful information, and I applaud your efforts, but I
22 don't see something that can show me whether or not the
23 area that we are concerned with is in this area. So that
24 is my question. I am here actually asking for help.

1 MR. PHILLIPS: Mrs. Burbage, I think
2 Mr. Vickers can answer your question.

3 MR. VICKERS: At the back of the room we
4 have each of the counties, the 2002 air photography, over
5 top of that we have the proposed State resource areas in
6 green, and we have individual tax parcels over top of
7 that as well.

8 So later, the lights can come back up
9 there, and you can check out down to the tax parcel and
10 actually down to the resource underneath it.

11 MS. BURBAGE: Thank you.

12 MR. PHILLIPS: Is there anyone else who
13 wishes to make a comment?

14 Mr. Vickers.

15 MR. VICKERS: Yes. And also those same
16 maps are on the website now for those of you who are
17 computer literate, I will say, can go in and you can zoom
18 in. It takes a little patience. The instructions are
19 there, but you can zoom in right down to the parcel level
20 or even smaller if you choose and view places up and down
21 the state.

22 MR. HARMAN: Will there be notification
23 of property owners individually?

24 MR. VICKERS: No, sir, not at this time.

1 MR. HARMAN: At some future time?

2 MR. VICKERS: We are not notifying
3 property owners, sir.

4 MR. PHILLIPS: Yes, sir.

5 SPEAKER FROM THE FLOOR: Question.

6 Mr. Vickers, you stated earlier that you won't be
7 prohibited from developing your property, what about if
8 you want to do something on your property, not
9 development, but do another activity? Are you going to
10 be prohibited from that because it's in a green area?

11 MR. VICKERS: No. If you are not
12 changing the land use on it, say changing from an ag
13 setting or working forest setting to a development, then
14 carry on as normal, agricultural production or working
15 forest or whatever.

16 We assume or we think that when the
17 counties take this information that they will probably
18 bring it into developing and process if someone comes in
19 for a land use change, whether it's a minor subdivision
20 or a major subdivision, then it would kick in looking at
21 whether it's within a state resource area or not. We
22 anticipate that's what the counties would do.

23 SPEAKER FROM THE FLOOR: You are talking
24 about subdivision, I'm talking about other use of your

1 own property.

2 MR. VICKERS: Such as?

3 SPEAKER FROM THE FLOOR: I represent an
4 area that has a rifle range and shooting area. Are we
5 going to be prohibited from changing our facility?

6 MR. VICKERS: No. I don't see it as
7 changing. It doesn't kick in a review process by the
8 county, does it?

9 SPEAKER FROM THE FLOOR: It does.

10 MR. VICKERS: Then it may. I don't
11 know, those rules and determination are up to the county
12 as to how they choose to treat the green area. Our
13 purpose is providing them with the resource maps based on
14 what we see on the landscape sciencewise, background
15 informationwise, then from there it's going to be working
16 with the counties and you know what that means in
17 particular, specifically.

18 MR. PHILLIPS: I was just advised that
19 anybody who wishes to review the stack of materials that
20 was identified as being part of the record will be kept
21 available here so you may come to the DNREC offices to, I
22 believe, Parks and Recreation, and review the materials
23 and select those which you wish to be copied. And that
24 can be done any time during normal business hours, which

1 are at DNREC, I believe, from 8:00 until 4:30 Monday
 2 through Friday. If no one else has a comment, I believe
 3 we can bring this hearing to a close.

4 THE CHAIRPERSON: Thank you all for
 5 coming and thank you for your comments to the Open Space
 6 Council.

7

8 (The hearing was adjourned at 8:01 p.m.)

9 (Exhibit Nos. 31 and 32 were marked.)

10

11 E X H I B I T S

12

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C E R T I F I C A T E

STATE OF DELAWARE:

NEW CASTLE COUNTY:

I, Ellen Corbett Hannum, a Notary Public within and for the County and State aforesaid, do hereby certify that the foregoing hearing was taken before me, pursuant to notice, at the time and place indicated; that the testimony of said participants was correctly recorded in machine shorthand by me and thereafter transcribed under my supervision with computer-aided transcription; that the deposition is a true record of the statements given by the participants; and that I am neither of counsel nor kin to any party in said action, nor interested in the outcome thereof.

WITNESS my hand and official seal this 2nd day of May
A.D. 2006.

Ellen Corbett Hannum, RMR, CMRS
Notary Public - Reporter
Delaware Certified Shorthand Reporter
Certification No. 118-RPR